

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-58072; File No. SR-ISE-2008-51)

July 1, 2008

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Establish an Exemption for Certain Regulation NMS-Compliant Intermarket Sweep Orders from the Requirements in Rule 2119 (Equity EAMs Acting as Brokers) and Conform Rule 2119 to Financial Industry Regulatory Authority Rules

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on June 24, 2008, the International Securities Exchange, LLC (“Exchange” or “ISE”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under Section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Rule 2119 (Equity EAMs Acting as Brokers) to conform it to similar Financial Industry Regulatory Authority, Inc. (“FINRA”) rules. The text of the proposed rule change is available on the Exchange’s Web site (www.ise.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

ISE Rule 2119 generally prohibits an Equity Electronic Access Member ("Equity EAM") from trading for its own account in a security when the Equity EAM is either holding an unexecuted customer market order in that security or trades at a price that is equal to or better than an unexecuted customer limit order that it holds in that security. Although FINRA rules impose similar obligations, FINRA provides for exceptions and exemptions to this obligation that the Exchange now seeks to adopt.

The Exchange proposes to amend Rule 2119 to include an exception that allows an Equity EAM to trade for its own account in a security when the Equity EAM is either holding an unexecuted customer market order in that security or trades at a price that is equal to or better than an unexecuted customer limit order that it holds in that security, provided that the Equity EAM immediately thereafter executes the customer order up to the size and at the same price at which it traded for its own account or better.

The Exchange also proposes to amend Rule 2119 to add an exemption that was recently adopted by FINRA. On May 6, 2008, the Commission approved amendments to FINRA Rule

2111 and IM-2110-2 that establish an intermarket sweep order (“ISO”) exemption.⁵ This exemption provides members with relief from the obligations related to trading in their own accounts while holding an unexecuted customer order. Specifically, an exemption applies when an ISO is routed for the member’s own account and a customer order is received after the member routed the ISO, but before the member receives an execution. Additionally, an exemption applies when the member executes an ISO to facilitate a customer order and that customer has consented to not receiving the better prices obtained by the ISO.

The Exchange proposes to amend Rule 2119 to incorporate these exceptions and exemptions into its Rule to facilitate member compliance with Regulation NMS and to more closely align ISE Rules with similar FINRA rules.

2. Statutory Basis

The basis for this proposed rule change is found in Section 6(b)(5)⁶ of the Act. Specifically, the Exchange believes the proposed rule change is consistent with the requirement in Section 6(b)(5) that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁵ See Securities Exchange Release No. 57784 (May 6, 2008), 73 FR 27587 (May 13, 2008) (SR-FINRA-2007-39) (“Release No. 34-57784”).

⁶ 15 U.S.C. 78(f)(b)(5).

